



Douglas A. Ducey,
Governor

Arizona State Board of Dental Examiners

“Caring for the Public’s Dental
Health and Professional Standards”

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OPEN SESSION MINUTES

January 8, 2021
Special Board Meeting

Members of the Arizona State Board of Dental Examiners (“Board”) held a special board meeting at 1:03 p.m. on Friday, January 8, 2021, which was held virtually and telephonically due to the COVID-19 pandemic. All participants, including guests participated either telephonically or virtually. The Board met in Executive Session during its consideration of agenda item IV.A.1. as stated herein.

Board Members

Heather N. Hardy, RDH – President
Anthony Herro, DDS – Vice-President
Lisa B. Bienstock, DMD
Morgan B. Burg
Aditya Dynar, Esq.
Nick Goodman
John N. Harman IV, DDS
Marilyn L. McClain, RDH
Russell Jeffrey Morrow, DDS
Leslie D. Seaman, DDS
Robert B. Taylor, DDS

I. CALL TO ORDER AND ROLL CALL

President Hardy called the Board’s meeting to order at 1:03 p.m.

ROLL CALL

The following Board members participated in the meeting:

President Hardy, Vice-President Herro, Dr. Bienstock, Ms. Burg, Mr. Dynar, Mr. Goodman, Dr. Harman, Ms. McClain, Dr. Morrow, Dr. Seaman and Dr. Taylor.

ALSO PRESENT

The following Board staff and Assistant Attorneys General participated in the meeting:

Ryan P. Edmonson, Executive Director; Kristina C. Gomez, Deputy Director; Seth T. Hargraves, Esq., Assistant Attorney General (“AAG”); Sherrie Biggs, Assistant Deputy Director; Selena Acuna, Legal Administrator; Susie Adams, Program and Project Specialist; Jill Barenbaum, Administrative Assistant; Julie Cutler, DMD, Deputy Chief Investigative Consultant; John Dovgan, DDS, Chief Investigator; Nancy Elia, Administrative Services Officer; Lisa Schmelling, Chief Compliance Officer; and, Andrea Cisneros, Minutes Administrator. AAG Michael Raine also participated in the meeting to provide the Board with independent legal advice on the Hearing matters as stated herein.

The following individuals were also in attendance of the meeting:

Dr. Brooke Zoumbaris, Respondent for Agenda Item No. IV.A.1.; KW, Complainant in case number 2019000014; and, David Williams, Attorney for the Respondent in Agenda Item No. IV.B.1.

II. CALL TO THE PUBLIC

Board staff read aloud a written statement from Complainant JB regarding Agenda Item No. IV.A.1. involving Dr. Zoumbaris. JB reported in her correspondence her concerns regarding Dr. Zoumbaris' care and that she believed further training and license revocation was warranted.

Complainant KW addressed the Board during the Call to the Public regarding Agenda Item No. IV.A.1. involving Dr. Zoumbaris. KW stated her concerns regarding the care she received from Dr. Zoumbaris in March of 2019 and the additional work required to fix the tooth.

III. DECLARATION OF CONFLICTS OF INTEREST – A.R.S. § 38-503

No conflicts of interest were declared by Board members at the start of the meeting.

IV. ITEMS FOR BOARD REVIEW, DISCUSSION AND POSSIBLE ACTION

A. Formal Interview(s)

1. 201900170, 201900213, 201900224, 201900232, 201900245, 201900268, 201900268 and 202000014; Zoumbaris, Brooke

Dr. Zoumbaris participated in the meeting during the Board's consideration of these matters, made a statement and answered the Board members' questions. Executive Director Edmonson summarized that the Board received multiple complaints against Dr. Zoumbaris alleging various violations. Dr. Zoumbaris stated that she saw most of the patients at her previous place of employment and described, for the Board, the difficulties she faced after leaving that office including lack of access to patient files.

At 1:28 p.m., the Executive Director announced that Ms. McClain had joined the meeting.

The Board initially considered the cases under this agenda item individually and questioned the licensee regarding the care provided to each of the patients. In her closing comments, Dr. Zoumbaris reiterated the difficulties she encountered after leaving the practice and her inability to ensure that the patient files submitted to the Board for review were complete. She stated that she wanted to help the patients and that she attempted to settle these matters outside of the office.

During the Board's deliberations, Vice-President Herro recognized that the licensee did not have access to the patients' files after leaving the practice and stated his concerns regarding recordkeeping relating to missing x-rays and consent forms. Vice-President Herro further stated his concerns regarding the number of complaints that span multiple different categories for which a general dentist is responsible as well as his concerns regarding the licensee's testimony wherein she shifted the responsibility for the issues raised in these cases.

Dr. Morrow stated his concerns regarding the issues raised in the cases related to endodontics, recordkeeping, crown and bridge, risk management and ethics. Dr. Taylor stated his concerns regarding Dr. Zoumbaris' practice including recordkeeping, misdiagnosis, loose bridge, periodontitis and fillings. President Hardy stated her concerns regarding the licensee's testimony in that she failed to take responsibility for the dentistry that was performed for these patients and stated that the issues identified in the cases involved the entire dentistry scope of practice. Dr. Seaman stated that the cases taken individually did not appear egregious, but that there did appear to be a pattern of behavior on the part of the licensee of not paying attention to detail and not

following the principles of treatment planning and successful outcomes. Other members discussed that each case was egregious and warranted disciplinary action by the Board.

MOTION: Vice-President Herro moved for the Board to enter into Executive Session to obtain legal advice pursuant to A.R.S. § 38-431.03(A)(3).

SECOND: Dr. Taylor

VOTE: 11-aye, 0-nay, 0-abstain, 0-recuse, 0-absent.

MOTION PASSED.

The Board entered into Executive Session at 3:11 p.m.

The Board returned to Open Session at 3:40 p.m.

No legal action was taken by the Board during Executive Session.

Vice-President Herro proposed suspending the license for a short time during which the licensee shall complete CE with subsequent practice monitoring. Dr. Morrow spoke in favor of requiring Dr. Zoumbaris to complete a number of CE courses to address the concerns raised in these cases and stated his concerns regarding a one year suspension of the license. President Hardy spoke in favor of a six-month suspension, CE and practice monitoring for a total of one year probation. Dr. Morrow proposed requiring chart reviews versus practice monitoring. The Board considered referring this matter to OAH based on the discussion regarding license suspension and offering the licensee a Consent Agreement for a six-month license suspension, requirement to complete CE and returning the case to the Board for consideration of lifting the suspension and thereafter placing the license on a six-month probation for practice monitoring or chart reviews. President Hardy asked the licensee if she would accept entering into such an agreement with the Board to settle these matters in lieu of a Formal Hearing and Dr. Zoumbaris declined due to the period of license suspension.

After hearing the Board members' concerns regarding the licensee's ability to practice while this matter is pending, AAG Hargraves informed the Board regarding its authority under A.R.S. § 41-1092.11(B) to summarily suspend the license if it finds that the public health, safety or welfare imperatively requires emergency Board action. Dr. Harman spoke against a summary suspension and Dr. Taylor stated his concerns regarding the egregious issues raised in many of the cases and stated that it is the Board's duty to protect the public.

MOTION: Dr. Harman moved for the Board to refer this matter to the Office of Administrative Hearings for a Formal Hearing to suspend the license for six months and the requirement to complete hands-on CE in the following areas: 24 hours in crown and bridge, 24 hours in endodontics, 24 hours in oral surgery, 4 hours in treatment planning, 4 hours in recordkeeping and 3 hours in risk assessment to be completed within a six-month suspension period and in addition to the statutorily required CE hours for license renewal. The suspension shall not be lifted until completion of all CE. Thereafter, the license shall be placed on a one year probation with monitoring of 20 charts monthly by a Board approved third party to report back to the Board, at the licensee's expense. The Probation shall not terminate except upon affirmative request by the licensee and shall be accompanied by a letter of support from the chart monitor.

SECOND: President Hardy

Mr. Goodman questioned whether the license should be summarily suspended until the Hearing can be held in order to protect the public in the interim. Dr. Morrow stated his concerns regarding the abrupt suspension of practice and how it may affect Dr. Zoumbaris' patients. Mr. Dynar spoke against the motion as he did not believe that the six-month suspension of licensure was warranted.

ROLL CALL VOTE: The following Board members voted in favor of the motion: President Hardy, Vice-President Herro, Dr. Bienstock, Ms. Burg, Dr. Harman and Dr. Morrow. The following Board members voted against the motion: Mr. Dynar, Mr. Goodman, Dr. Seaman and Dr. Taylor. The following Board member was absent: Ms. McClain.

VOTE: 6-aye, 4-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

Dr. Morrow departed from the meeting at 4:13 p.m. The Board recessed from 4:15 p.m. to 4:21 p.m. during which Dr. Seaman also departed from the meeting.

B. Review Administrative Law Judge's ("ALJ") Recommended Decision(s)

1. 201700175; Victor E. Trujillo

Attorney David Williams participated in the meeting on behalf of Dr. Trujillo during the Board's consideration of this matter. AAG Seth Hargraves participated on behalf of the State and AAG Michael Raine participated to provide the Board with independent legal advice.

MOTION: Vice-President Herro moved for the Board to accept the ALJ's recommended decision.

Vice-President Herro rescinded his motion to allow the parties an opportunity to address the Board.

AAG Hargraves summarized that this matter was initiated after receiving notification of a malpractice settlement involving Dr. Trujillo and his care of patient JW who sustained a nerve injury during the course of treatment. The ALJ found that the preponderance of evidence demonstrated that Dr. Trujillo committed unprofessional conduct when he removed tooth #32 in that he failed to properly document in the patient's chart that the tooth had an abscess when removed and recommended probation with CE focusing on the areas of recordkeeping, oral surgery and radiographic diagnosis. The ALJ also recommended reimbursement of Formal Hearing costs. AAG Hargraves asked the Board to adopt the ALJ's recommended decision in this matter.

Mr. Williams asked the Board to reject or modify the ALJ's recommended decision with respect to Findings of Fact #86 and Conclusions of Law #s 7, 9, 10, 12, 13 and 14. He stated that there has been no determination as to the approximate cause of the injury and that the standard of care when removing an impacted third molar has not been established in this case. Mr. Williams stated that this matter does not rise to the level of discipline given the absence of the State meeting its burden of proof with regard to standard of care violations and asked the Board to issue a non-disciplinary order to complete CE.

AAG Hargraves stated that the recommended decision did not require modification and that the ALJ found that the State met its burden in this matter. He stated that the

patient's subsequent provider who performed the corrective procedure indicated that the injury was caused by a sharp object during the surgery performed by Dr. Trujillo. He asked the Board to adopt the ALJ's recommended decision as written.

MOTION: Mr. Dynar moved for the Board to adopt the ALJ's recommended Findings of Fact.

SECOND: Dr. Taylor

VOTE: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

MOTION: Dr. Taylor moved for the Board to adopt the ALJ's recommended Conclusions of Law.

SECOND: Vice-President Herro

VOTE: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

MOTION: Dr. Taylor moved for the Board to adopt the ALJ's recommended Order to place the licensee on a one year probation, require the completion of 3 hours of CE in recordkeeping, 6 hours in oral surgery and 3 hours in radiographic diagnosis in addition to the statutorily required CEs for license renewal. The motion included that the licensee shall be assessed the Formal Hearing costs in the amount of \$6,782.63.

SECOND: President Hardy

Mr. Williams requested the Board provide him with an itemized list of the Formal Hearing costs to justify the amount assessed to the licensee. AAG Hargraves pointed out that the invoice outlined the costs for the court reporter, the Formal Hearing and a number of motions filed by the respondent.

ROLL CALL VOTE: The following Board members voted in favor of the motion: President Hardy, Vice-President Herro, Dr. Bienstock, Ms. Burg, Mr. Dynar, Mr. Goodman, Dr. Harman, Ms. McClain and Dr. Taylor. The following Board members were absent: Dr. Morrow and Dr. Seaman.

VOTE: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

2. 201900135; Nicholas P. Heiner

Dr. Bienstock was recused from this item.

AAG Seth Hargraves participated on behalf of the State and AAG Michael Raine participated to provide the Board with independent legal advice. Dr. Heiner did not participate in the meeting during the Board's consideration of this matter, nor did he have legal counsel.

AAG Hargraves summarized that the Board previously issued a Non-Disciplinary Order in a prior matter and that the licensee failed to comply with its terms. This matter was scheduled for Formal Hearing on November 3, 2020, the Complaint and Notice of Hearing was sent to Dr. Heiner and the Hearing was held in his absence. The ALJ thereafter issued a recommended decision for license revocation, which AAG Hargraves asked the Board to adopt.

MOTION: Dr. Taylor moved for the Board to adopt the ALJ's recommended Findings of Fact.

SECOND: Vice-President Herro

VOTE: 8-aye, 0-nay, 0-abstain, 1-recuse, 2-absent.

MOTION PASSED.

MOTION: Dr. Taylor moved for the Board to adopt the ALJ's recommended Conclusions of Law.

SECOND: Vice-President Herro

VOTE: 7-aye, 1-nay, 0-abstain, 1-recuse, 2-absent.

MOTION PASSED.

Mr. Dynar voted against the motion.

MOTION: Dr. Taylor moved for the Board to adopt the ALJ's recommended Order for license revocation.

SECOND: Dr. Harman

ROLL CALL VOTE: The following Board members voted in favor of the motion: President Hardy, Vice-President Herro, Ms. Burg, Mr. Goodman, Dr. Harman, Ms. McClain and Dr. Taylor. The following Board member voted against the motion: Mr. Dynar. The following Board member was recused: Dr. Bienstock. The following Board members were absent: Dr. Morrow and Dr. Seaman.

VOTE: 7-aye, 1-nay, 0-abstain, 1-recuse, 2-absent.

MOTION PASSED.

3. 202000044-MP; Meyer, Nicholas

AAG Seth Hargraves participated on behalf of the State and AAG Michael Raine participated to provide the Board with independent legal advice. Dr. Meyer was not present during the Board's consideration of this matter, nor did he have legal counsel.

AAG Hargraves summarized that this investigation was initiated after receiving notification of a malpractice settlement involving Dr. Meyer. Board staff issued a subpoena requesting patient records and a narrative response. Dr. Meyer responded, but did not provide the requested information. Board staff's further attempts to obtain the requested information went unsuccessful. This matter was scheduled for Formal Hearing on November 3, 2020 and copies the Complaint and Notice of Hearing were sent to the licensee, which he then sent back to the Board signing off that he was rejecting them. AAG Hargraves further summarized that the Formal Hearing was held in Dr. Meyer's absence and that the ALJ issued a recommended decision for license revocation and reimbursement of hearing costs. AAG Hargraves asked the Board to adopt the ALJ's recommended decision in this matter.

MOTION: Dr. Taylor moved for the Board to adopt the ALJ's recommended Findings of Fact.

SECOND: President Hardy

VOTE: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

MOTION: Dr. Taylor moved for the Board to adopt the ALJ's recommended Conclusions of Law.

SECOND: Vice-President Herro

VOTE: 8-aye, 1-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

Mr. Dynar voted against the motion.

MOTION: Dr. Taylor moved for the Board to adopt the ALJ's recommended Order for license revocation and to assess administrative hearing costs in the amount of \$812.62 to be paid within 30 days.

SECOND: Vice-President Herro

ROLL CALL VOTE: The following Board members voted in favor of the motion: President Hardy, Vice-President Herro, Dr. Bienstock, Ms. Burg, Mr. Goodman, Dr. Harman, Ms. McClain and Dr. Taylor. The following Board member voted against the motion: Mr. Dynar. The following Board members were absent: Dr. Morrow and Dr. Seaman.

VOTE: 8-aye, 1-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

V. SUMMARY OF CURRENT EVENTS

Executive Director Edmonson updated the Board regarding upcoming meetings of the Board and its committees. The Board noted that the Rules Advisory Group was scheduled to meet virtually on January 22, 2021.

VI. DISCUSSION REGARDING FUTURE MEETINGS AND POSSIBLE ACTION ITEMS FOR FUTURE MEETING AGENDAS

Vice-President Herro requested agendaizing a topic related to the Board's Formal Interview process and potential statutory change to allow the Board to make additional findings when concerns are raised during the Formal Interview that were not identified or raised during the course of the investigation.

VII. NEXT BOARD MEETING DATE

A. January 29, 2021

VIII. ADJOURNMENT

MOTION: Mr. Dynar moved for the Board to adjourn.

SECOND: Dr. Taylor

VOTE: 9-aye, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

The Board's meeting adjourned at 5:04 p.m.